

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Marine Polymer Technologies, Inc.

v.

Civil No. 06-cv-100-JD

HemCon, Inc.

Proposed Order of Trial

During a telephone conference held on February 3, 2010, the court indicated that it was considering bifurcation of the trial. The court proposed trying the issues of invalidity first, followed immediately by a trial on damages, if necessary, before the same jury.

Marine Polymer has filed two motions in limine addressing bifurcation. In its first motion, Marine Polymer opposes bifurcation, as proposed by the court, and argues that if the trial proceeded as proposed, HemCon should be precluded from suggesting to the jury that the process could be shortened if the patent claims were found to be invalid, because in that event it would not be necessary to consider damages. HemCon favors trying the invalidity issue first, to be followed by damages, if necessary, and agrees that the jury instructions should not suggest a short cut.

In its second motion, Marine Polymer proposes that invalidity and damages be tried together before the jury,

followed by a bench trial to resolve HemCon's inequitable conduct defense. Marine Polymer focuses on the potential for unfair prejudice if the jury hears evidence of inequitable conduct, which is not relevant to the issues the jury must decide. HemCon has not yet responded to Marine Polymer's second motion.

After considering the issues to be presented at trial and the possibility of bifurcation, the court proposes that the trial proceed as follows. The jury will be selected on April 14, 2010. Evidence will begin on Monday, April 19, 2010, on the invalidity defenses. If the jury finds that at least one of the asserted claims is not invalid, the jury trial will continue, and evidence will be presented to the same jury on damages. While the jury is deliberating on damages, the parties will present evidence to the court on the inequitable conduct defense. In the event that the jury awards damages, that award would stand or be vacated depending on the court's finding on the inequitable conduct defense.

"For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims." Fed. R. Civ. P. 42(b). In a matter that is complex, the court's proposed order of trial will allow the jury to hear evidence on invalidity and then, if necessary, on

damages, in a natural progression that will assist the jury in focusing on the issues at hand, unencumbered by evidence they may not need to consider. Only the court will hear evidence of inequitable conduct. This procedure will minimize any unfair prejudice to both parties, reduce the potential for confusion, and make efficient use of juror and court time.

Conclusion

The parties shall file their responses to the court's proposed order of trial on or before **April 5, 2010.**

SO ORDERED.

  
Joseph A. DiClerico, Jr.  
United States District Judge

March 30, 2010

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